

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

August 30, 2005

The Rhode Island Ethics Commission held its 15th meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 30, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James C. Segovis

George E. Weavill, Jr., Secretary Frederick K. Butler

Richard E. Kirby* Barbara Binder

James V. Murray Ross Cheit

Also present were William J. Conley, contract Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:20 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on July 26, 2005. Upon motion made by Commissioner Binder, and duly seconded by Commissioner Cheit, it was

VOTED: To approve the minutes of the Open Session held on July 26, 2005.

AYES: James Lynch, Sr., George E. Weavill, Jr., James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.

ABSTENTION: Frederick K. Butler.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

*** At approximately 9:22 a.m., Commissioner Kirby arrived.**

The first advisory opinion was that of Michaela K. Brockmann, the Executive Director of the Rhode Island Underground Storage Tank Financial Responsibility Fund Review Board. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.

Commissioner Cheit asked the petitioner why Rhode Island was not a member of NatLUST. The petitioner replied that such membership was unnecessary as the RI UST Review Board is sufficiently funded.

Upon motion made by Commissioner Cheit, duly seconded by Commissioner Segovis, it was

VOTED: To issue an advisory opinion, attached hereto, to Michaela K. Brockmann, the Executive Director of the Rhode Island Underground Storage Tank Financial Responsibility Fund Review Board.

AYES: James Lynch, Sr., George E. Weavill, Jr., James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

RECUSAL: Richard E. Kirby.

The next advisory opinion was that of William R. Facente, the Housing Officer for the City of Warwick's Office of Housing and Community Development. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.

Upon motion made by Commissioner Murray, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to William R. Facente, the Housing Officer for the City of Warwick's Office of Housing and Community Development.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby,

James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of Bruce J. Santa Anna, a member of the North Smithfield Planning Board. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.

Commissioner Weavill asked the petitioner whether he had any relationship to his doctor aside from doctor-patient relationship. The petitioner replied that their relationship was only as doctor-patient. Commissioner Cheit inquired whether the petitioner would remain a patient of this doctor. The petitioner stated that he does not know if he is going to continue this relationship. In response to Commissioner Cheit, Staff Attorney Leyden confirmed that a business relationship does not exist here regardless of the impact on the petitioner's judgment because this relationship does not create a business associate relationship under the Code of Ethics.

Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was

VOTED: To issue an advisory opinion, attached hereto, to Bruce J. Santa Anna, a member of the North Smithfield Planning Board.

AYES: James Lynch, Sr., George E. Weavill, Jr., James V. Murray,

James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

RECUSAL: Richard E. Kirby.

The next advisory opinion was that of Richard S. Hilton, a Commissioner for the Cumberland Housing Authority. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.

In response to Commissioner Weavill, the petitioner informed that there is no existing business relationship between the Housing Authority and the School Department.

Upon motion made by Commissioner Butler, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Richard S. Hilton, a Commissioner for the Cumberland Housing Authority.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next advisory opinion was that of Michael P. Robinson, a member and Chairman of the East Providence Planning Board. The petitioner

was present. Staff Attorney Robertson presented the Commission Staff recommendation.

Commissioner Kirby inquired whether the legislation creating the Waterfront Commission required that its members be on a Planning Board. The petitioner responded that the enabling statute only requires that members have planning experience. Commissioner Weavill asked how often the petitioner would have to recuse from Waterfront Commission matters before the Planning Board. The petitioner informed that he would guess that there have been less than five requests for advisory opinions and maybe two or three of them were requested in the last few years.

In response to Commissioner Kirby, the petitioner informed that there are approximately five members and three alternates on the Planning Board. Commissioner Kirby pointed out that the petitioner does not want to put the Waterfront Commission in the position of being unable to have enough members to conduct a vote because of his recusals. In response to Commissioner Weavill, the petitioner informed that there are approximately nine or ten members of the Waterfront Commission and that there are many ex-officio members.

Chair Lynch expressed his concern about issuing an advisory opinion to the petitioner since his appointment has not yet been confirmed by the Rhode Island Senate. He noted that the Governor can change his appointments when he resubmits them and he

suggested that the Commission withhold issuing the opinion until the petitioner is confirmed. He stated that he has concerns about there being a sudden increase in the number of advisory opinions requested by appointees.

Commissioner Weavill pointed out that it would be better if the petitioner knew now whether he can serve on the Commission. Commissioner Cheit asked the petitioner how his appointment became an issue requiring an advisory opinion. The petitioner explained that a Rhode Island Senator had questioned whether he could hold these two positions simultaneously. Commissioner Segovis commented that the Commission can issue this opinion and, in the future, monitor whether the Commission begins receiving a large number of such requests.

Upon motion made by Commissioner Kirby, duly seconded by Commissioner Weavill, it was

VOTED: To issue an advisory opinion, attached hereto, to Michael P. Robinson, a member and Chairman of the East Providence Planning Board.

AYES: George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

NOES: James Lynch, Sr.

At approximately 9:58 a.m., upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (a)(2), and (a)(4), to wit:

a.) To approve the minutes of Executive Session held on July 26, 2005.

b.) T. Brian Handrigan v. RIEC, C.A. No. PC05-3759.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

At approximately 10:05 a.m., the Commission returned to Open Session. Chair Lynch reported that the Commission took the following actions in the Executive Session:

a.) Voted to approve the minutes of Executive Session held on July 26, 2005.

b.) The Commission discussed the Handrigan case, which is ongoing and for which no action was taken today.

The next order of business was sealing the minutes of the Executive Session held on August 30, 2005. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Kirby, it was unanimously

VOTED: To seal the minutes of the Executive Session held on August 30, 2005.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

The next order of business was the Director's Report. Executive Director Willever reported on the pending complaints, investigations, and advisory opinions. He noted that Operation Compliance is now at 92%. He reported that Staff Attorney Gramitt, the Commission's Office Manager Patricia Barker, and he met with the liaison of the House Finance Committee at the Commission's office. He reported that the liaison was given a tour of the office and that they all discussed the budget. Executive Director Willever also reported that he is working on obtaining speakers for the COGEL conference. He noted that Staff Attorney Gramitt gave an excellent presentation to some 500 participants on the Code of Ethics earlier this month at the Attorney General's Open Government Summit.

The next order of business was discussion of Commission Regulations. In response to Chair Lynch, Staff Attorney Gramitt informed that the Commission Staff has work to do on the Commission's research and proposal requests for regulatory changes. He informed the Commission that these tasks are on the top of the list and that work would begin on them shortly since the advisory opinion backlog is now gone.

The next order of business was New Business. Commissioner Weavill asked the Commission and the Commission Staff to discuss the accuracy of a newspaper article he read about the Commission giving advice to Portsmouth officials regarding their attendance at speeches provided by two former United States Presidents at the Carnegie Abbey Club in Portsmouth. Executive Director Willever stated that the Commission Staff was contacted regarding President Bush's visit several weeks prior to the publication of this article. He informed that the background to this event began with a call from a Portsmouth official to the Commission Staff asking whether Portsmouth officials may attend an event sponsored by the Club's Principals. He stated that the official spoke to Chief Investigator Cross who consulted with Staff Attorney Gramitt.

Executive Director Willever stated that he was informed that Portsmouth only sought informal guidance on the Commission's gift regulations because there was no time to ask for an advisory opinion.

He stated that he was informed that the Commission Staff went over

the gift regulations with the official and that the town officials themselves decided not to attend the event. He stated that the Commission Staff did not provide the Town with formal advice. Commissioner Kirby noted that Portsmouth officials did not attend the event because the Club has matters pending before the Town of Portsmouth.

Chair Lynch added that he personally had received a telephone call regarding this event by a morning talk show in Rhode Island seeking comment on the supposed decision by the Commission that public officials could not attend this event. Chair Lynch informed the producer of the show that he was unaware of any such decision by the Commission and would look into it and get back to him. Chair Lynch stated that he then checked with the Commission Staff and received the same information just relayed by Executive Director Willever and Staff Attorney Gramitt. He informed that he then called the station back, however, by that time he stated that the show had already proceeded and made its own inaccurate determination of the Commission's position.

Commissioner Cheit pointed out that the main issue here was whether the officials could attend this event for free. He noted that the Governor paid to attend and stressed that all of the Portsmouth officials could have gone if they paid for their attendance to the event.

Executive Director Willever commended the Portsmouth officials for

their cautious approach and for calling the Commission Staff beforehand. Staff Attorney Gramitt pointed out that this call is a typical duty call and that such calls come in to the Commission Staff everyday.

At approximately 10:17 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Frederick K. Butler, Barbara Binder, and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.
Secretary